



## Introduction

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*Published in:*  
Crime over time

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*Recommended citation(APA):*

Lincoln, R., & Robinson, S. (2010). Introduction. In R. Lincoln, & S. Robinson (Eds.), *Crime over time: Temporal perspectives on crime and punishment in Australia* (pp. ix-xv). Cambridge Scholars Pub.

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## ACKNOWLEDGEMENTS

We are grateful to Cambridge Scholars Publishing for recognising the value of an interdisciplinary volume such as this one. We are pleased to be part of their growing list of international authors with books on such a wide range of intriguing topics that reflect the globalisation of academic enterprise.

This volume of course would not exist without the academic works of our contributors. We thank each of them sincerely for the enthusiasm with which they responded to our initial approach and then the disciplined way in which they delivered their contributions in such impeccable form.

Robyn wishes to acknowledge the enduring support of her spouse, Paul, and her family—immediate and extended. She dedicates her contribution to her late father, who personally witnessed much change over time in his eighty-five years and possessed a keen sense of justice. Vale Don.

Shirleene wishes to thank Sarah Midgley for her patience and encouragement and her family and friends for continued support. Yorick Smaal, Julie Ustinoff and Emily Wilson were all particularly enthusiastic about this project.

It has been both a pleasure and a privilege to work together on this volume.



## INTRODUCTION

Every nation deems certain acts to be criminal and punishes offenders according to the cultural values of the society. The study of crime and punishment reveals much about social order, reactions to deviance and norms.<sup>1</sup> The topics of crime and punishment have particular importance for Australia. It is a society whose European origins derive from the penal policies of late eighteenth century Great Britain. Until 1868, when convict transportation to Western Australia stopped, drawing the convict era to a close, Australian officials were preoccupied with criminality, punishment and the maintenance of absolute law and order. As a distinctive sense of Australian identity developed in the late nineteenth century, law-breaking figures, such as the bushranger Edward “Ned” Kelly, who was hanged at the age of 25, became national icons.<sup>2</sup> In contemporary Australia, the fascination with criminal activity shows no signs of abating. Television programmes such as *Underbelly*, which focus on notorious criminal figures, attain top ratings, popular crime novels sell extremely well and a number of Australian films continue to explore elements of Australia’s criminal past.

While a preoccupation with crime has been a constant among Australian society, the treatment of crime and the types of punishment meted out have both evolved significantly since the start of European settlement. Despite the important role that crime and punishment have played in Australia’s past, there is a dearth of academically rigorous but accessible texts that have examined crime, criminals and punishment in the nation’s history. The management of crime in Australia has been affected by changing ideas about criminal responsibility, improvements in policing, reforms in prison design and moves away from corporal punishment. The types of acts that are considered to be unlawful have evolved over time.<sup>3</sup> Thus, a rigorous historical examination of crime, criminality and punishment serves as an excellent guide to the shifting mores, norms and ideals held within Australia.

In 1991, contributors to the *Australian and New Zealand Journal of Criminology* pointed out that criminology and history would benefit when their approaches were integrated.<sup>4</sup> Yet, Peter King, who has studied global explorations of the history of crime, asserts that “historians have rarely made explicit links between their work and that of their criminological

contemporaries".<sup>5</sup> The discipline of criminology provides a deeper theoretical foundation for understanding the social history of crime and punishment.<sup>6</sup> Criminology, with its objective social science research methods, delivers a rich means of analysing different histories and perspectives.<sup>7</sup> Furthermore, as David Garland and Richard Sparks have pointed out, criminology is "part of popular culture, a constitutive (and constituted) element in the collective experience of crime, a repertoire of frames and narratives through which we make sense of that experience".<sup>8</sup> This book is informed by calls to amalgamate criminology and history. It responds to the challenge posed by the British criminologist Paul Rock, who lamented that the social science of criminology tends to take a very practical and immediate perspective at the view of ignoring the historical purview.<sup>9</sup>

In an Australian context, most work pertaining to the history of crime has focused either exclusively on convicts and convict settlement or on crime in the colonial era.<sup>10</sup> The text, *A Nation of Rogues: Crime, Law and Punishment in Colonial Australia*, which was published in 1997, provides a sound introduction to crime in colonial Australia.<sup>11</sup> Its analysis, however, does not extend beyond the nineteenth century and its approach is not informed by more recent fields of social history or changing understandings of criminal behaviour. There have been some solid attempts to provide overviews of particular aspects of criminal policy in Australia's past. Mark Finnane's excellent book, *Punishment in Australian Society*, has focused on shifts in the sanctions that attach to criminal acts throughout Australian history.<sup>12</sup> Sean O'Toole's 2006 text, *The History of Australian Correction*, provides a thorough exploration of judicial responses to crime but does not consider changes in criminal activity.<sup>13</sup> More recently, in their 2007 text, *Gangland Australia: Colonial Criminals to the Carlton Crew*, Susanna Lobez and James Morton conducted a study of organised crime from the colonial era to the present.<sup>14</sup>

Criminological texts serve to provide information about the causes, nature and extent of contemporary crime in Australian society. Duncan Chappell and Paul Wilson's 2005 edited collection, *Issues in Australian Crime and Criminal Justice*, provides a comprehensive overview of the criminal activities that impact on Australian society and the way that they are managed by the criminal justice system.<sup>15</sup> This book includes a particularly pertinent chapter by Satyanshu Mukherjee which provides a concise but important overview of the history of Australian criminal correction.<sup>16</sup> On a broader level, the *Cambridge Handbook of Australian Criminology*, edited by Adam Graycar and Peter Grabosky in 2002, presents a range of statistics and issues-based discussion that illustrate the

impact of crime on the Australian community.<sup>17</sup> Other criminology texts have focused more specifically on particular categories of victims, offenders, crimes or policy responses in contemporary Australia.<sup>18</sup>

By using a multi-disciplinary approach, drawing from criminology and history, this text attempts to fill a lacuna in existing literature. It contains a range of theoretically informed case studies that furnish a social history of Australian crime, the way it has evolved and the innovative methods that authorities have used to police and punish those who offend. The authors also outline and analyse the ways that criminology and criminal justice have been constructed and viewed over time. The temporal focus of this text spans more than 220 years of Australia's European history. It draws from a range of recent international studies that have successfully integrated historical and criminological methods to investigate the social history of crime and punishment.<sup>19</sup> Any such collection is bound to be controversial in its selection, for there is such a wide variety of issues and events from which to choose. Thus, this volume does not map a genealogy of the discipline of criminology in Australia but it does traverse the developments in some key topic areas that have garnered significant criminological attention.<sup>20</sup>

The first three chapters in this book feature in a section entitled "Evolution of Australian Criminal Activity". Since 1788, the types of crimes that Australians have committed have changed manifestly. As Howard Zehr has pointed out, criminal behaviour for many offenders represents a way of protesting against society or prevailing social norms.<sup>21</sup> As social structures have shifted and evolved, some outlets have appeared which have reduced the need for particular types of criminal activities; while other forms of criminal activity have been constant throughout Australian history. Due to a plethora of material exploring the convict experience, this topic has not been included in this book.<sup>22</sup> Instead, the section focuses on topics that have received scant consideration.

One of the forms of criminal activity that has been most closely associated with Australia historically is bushranging. Although most nations have some form of social banditry and many of these bandits have been embraced as heroes, the term "bushranger" is distinctively Australian. By the late nineteenth century, bushrangers—individuals who robbed and stole from coaches, banks or other people and subsisted largely in the bush—had obtained iconic status in Australian folklore. Despite their enduring folk hero status, there have been very few academic examinations of these figures. In Chapter One, Murray Johnson considers the reasons that bushrangers were accorded iconic status at a time when



most Australians were residing in urban centres, far removed from the haunts of bushrangers.

Crimes that impact on Indigenous people also have an important historical dimension. In Chapter Two, Jonathan Richards explores a contested element of Australia's past, demonstrating the way that officials condoned and actively supported the use of violence against Aboriginal people on the Australian frontier. In nineteenth century Queensland, the Native Police force, a special wing of government composed of armed and mounted Indigenous troopers led by European officers, was created solely to crush any resistance by killing Indigenous people. Richards outlines the story of that body of men, including the rare occasions when criminal charges were raised against members of the force.

In Chapter Three, Paul Wilson clearly demonstrates that a type of crime many believe to be a product of the late twentieth century has important historical dimensions. Wilson explains that terrorism impacted on Australian shores in the 1960s, though specific laws relating to terrorism were not introduced until the 1970s. Since September 11 however, a significant number of other laws dealing with terrorism were introduced and a number of organisations banned. Despite many Australian deaths through terrorist actions overseas (Bali 1 and Bali 2) and trials of terrorists within Australia, a corrosive debate exists relating to the overreach of terrorist laws and the targeting of specific groups by security and law enforcement agencies. Certainly, terrorism has become increasingly sophisticated and continues to pose enormous challenges to law enforcement and the criminal justice system.

The second section of the book is entitled "Changing Ideas of Criminality and Offenders" and contains four chapters which explore the social and historical milieu surrounding designations of criminality. Such designations are politically, economically and socially constructed. Crime and its management must be viewed in relationship to the dominant social and political order. Legal processes and the criminal justice system have socially constructed a number of forms of criminality in Australia's past. Individuals from marginalised, minority and non-conforming groups have been more likely to have negative experiences within the criminal justice system. This is still an issue in contemporary Australia. The chapters in this section explore the varying experiences of individuals from groups designated as "criminal" throughout Australian history.

Race has been an important factor that has impacted on who has been considered criminal in Australia's past. In Chapter Four, Shirleene Robinson explores the way that Aboriginal children were affected by racially-driven ideology in the late nineteenth and early twentieth

centuries. Robinson argues that Aboriginal children were viewed as a “criminal” or “problem” population as a result of their race and their position as members of a colonised group. As a consequence, governments across Australia enacted legislation which designated Aboriginal children as “criminal” or “neglected” entirely on the basis of their race and allowed for the removal and “retraining” of Aboriginal children. Their designation as members of a “criminal” group on the basis of race has links to the “stolen generation” policies that were practised across Australia well into the twentieth century.

In Chapter Five, Sean Brawley chronicles and contextualises anti-Asian crime in colonial Australia. The rapid arrival of large numbers of Chinese people during the gold rushes saw many Europeans fear economic competition. Furthermore, racist ideology saw many Europeans express prejudice against Chinese people. Brawley focuses on the ways that these prejudices against Chinese people were expressed in the colonial period, finding that violence and aggression were frequent during this era. The topic explored by Brawley has clear parallels to contemporary anti-Asian sentiment and Brawley uses an innovative framework drawing on contemporary terrorism studies to explore this.

The Australian criminal justice has also regulated gender and sexuality. While homosexual acts are no longer illegal in Australia, male homosexuality was criminalised for much of the nation’s history. In Chapter Six, Yorick Smaal focuses on Queensland, where male homosexual acts were illegal for a little over 130 years. Smaal turns his attention to the regulation of male-to-male sexual activity during World War II, investigating the way that the “crime” of homosexuality was policed, penalised and punished. Smaal fits his analysis into the wider context of state surveillance of public space and the expansion of official powers to control and contain what was perceived to be “dangerous” expressions of sexuality.

In Chapter Seven, Emily Wilson focuses on a section of the community that has been particularly vulnerable to mistreatment and abuse. Wilson writes about the 1993 Human Rights and Equal Opportunity Commission report of the National Inquiry into the Human Rights of People with Mental Illness. This report found that violations of the human rights of those in psychiatric care in Australia were commonplace. Although the treatment of the mentally ill as criminals had been discredited for almost a hundred years, in many areas this report indicated that similar attitudes persisted into our recent past. Certainly, her historical analysis speaks to current issues of the over-representation of people with mental illnesses being incarcerated in the nation’s prisons.

The third section of the book canvasses “Variation in Responses to Crime” and it explores the innovative ways that authorities have attempted to police and punish those who offend. Since 1788, the state has responded in a variety of ways, including the use of corporal punishment, deterrence, treatment, preventative programmes and rehabilitative programmes. Throughout this period, communications, technology and the structures and processes put in place to regulate and monitor criminal activity have all changed considerably. Furthermore, theories of crime causation and crime control policy have also evolved. The rapid evolution of responses to criminal activity is a vital component of a study of crime in Australia’s past.

Police have played—and continue to play—a prime role in managing criminal activity in Australian society. In Chapter Eight, Tim Prenzler considers the evolution of Australian policing from a colonial militia through to the contemporary police service that exists today. He explores the tensions that existed between the more aggressive frontier-style based on the Irish Constabulary model and the preventive ideal of the English New Police. He finds that policing has tended to reflect broader social prejudices and has been sexist, racist, violent and corrupt at times. He observes, however, that there have been significant improvements over the past thirty years, with policing transformed by human research management and integrity management strategies, along with a significant divergence into the private sector and specialist areas.

Capital punishment served as the ultimate criminal sanction in Australia until it was abolished. In Chapter Nine, Robyn Lincoln and Shirleene Robinson broach the vexed issue of capital punishment. In 1967, Ronald Ryan was the last Australian to be subjected to capital punishment in this country but this form of punishment remained a legislative option up until the 1980s. This chapter explores the empirical data on executions since colonisation, presents details of some notable cases where offenders were delivered the death sentence, and examines the public opinion data (over the last fifty years) about how Australians view capital punishment as a legal sanction. While it is now more than four decades since that last execution, the spectre of the sentence of death is never far from public and political consciousness, especially when particularly heinous crimes are committed. The chapter includes recent debates about death sentences imposed on Australian citizens while abroad.

In Chapter Ten, Russell Smith explores the challenges posed by cybercrime. Computer-based criminal activity is one of the fastest growing types of crimes in the world today. The risks of criminal misuse of information are significant. Smith investigates the motivations guiding

most cybercrimes and finds that financial gain is a major stimulating factor. He observes that this type of crime has been particularly imaginative and that government authorities, businesses and law enforcers have had to develop corresponding attempts to counter the threats. He concludes his chapter with an evaluation of potential risks for the future and outlines effective responses to cybercrime.

Crime is a central part of society that impacts on everyone either directly or indirectly. Some people are victims of crime during their lifetimes. Others turn to crime and come before the criminal justice system. Many others who do not directly encounter criminal offenders remain fearful about potential criminal threats. The community as a whole also pays a financial cost as a result of criminal activities. A significant number of individuals are also involved in formulating responses to crime and managing criminal offenders. Thus, a study of crime reveals much about protest, power structures, social control, norms and deviance. This historical exploration of the impact of crime and its management elucidates much about Australia's past. This collection also has implications for the prevention, management and recording of crime in contemporary Australia. It provides a long-term perspective that sheds light on what has succeeded and what has failed with regard to criminal justice.<sup>23</sup> Its value therefore lies in the way it increases knowledge about an important but neglected aspect of Australia's past, while also serving an important practical purpose for those involved in law enforcement and the criminal justice system.

The volume is also forward-looking in that it assists in addressing the challenges ahead with the consequences of globalisation or from new developments in genetics and forensic science that will impact on the type or shape of offending behaviour, the way we explain crime and the justice mechanisms available to deal with them. This is where a long-term purview offers a foundation to deal with those future changes. The disciplines of history and criminology—both focusing on offenders, the law and justice matters—can enrich our debates by “building and borrowing from related but separate disciplines”.<sup>24</sup>

## Notes

<sup>1</sup> Robert J. Sampson, "Whither the Sociological Study of Crime?", *Annual Review of Sociology* 26 (2000), 711-14.

<sup>2</sup> See particularly, Graham Seal, *Tell 'em I Died Game: The Legend of Ned Kelly* (Flemington, Victoria: Hyland House Publishing, 2002); Graham Seal, *The Outlaw Legend: A Cultural Tradition in Britain, America and Australia* (Cambridge: Cambridge University Press, 1996).

<sup>3</sup> Keith Soothill, Moira Peelo and Claire Taylor, *Making Sense of Criminology* (Cambridge: Polity Press, 2002).

<sup>4</sup> *Australian and New Zealand Journal of Criminology*, Special Issue, "History and Crime", 24, no. 2 (1991).

<sup>5</sup> *Ibid*; see also Mark Finnane, "The ABC of Criminology: Anita Muhl, J.V. Barry, Norval Morris and the Making of a Discipline in Australia", *British Journal of Criminology* 46 (2006), 399-422.

<sup>6</sup> David Garland and Richard Sparks, "Criminology, Social Theory and the Challenge of Our Times", *British Journal of Criminology* 40 (2000), 193.

<sup>7</sup> Peter King, "Locating Histories of Crime: A Bibliographic Study", *British Journal of Criminology* 39, no. 1 (Special Issue 1999), 161.

<sup>8</sup> David Garland and Richard Sparks, "Criminology, Social Theory and the Challenge of Our Times", 189-204.

<sup>9</sup> See Paul Rock, ed., *History of British Criminology* (Oxford: Clarendon Press, 1988).

<sup>10</sup> For work on convicts, see particularly, Deborah Oxley, *Convict Maids: The Forced Migration of Women to Australia* (Melbourne: Cambridge University Press, 1996); Raymond Evans and William Thorpe, "Power, Punishment and Penal Labour: Convict Workers and Moreton Bay", *Australian Historical Studies*, no. 98 (1992), 90-111; Stephen Nicholas, ed., *Convict Workers: Re-interpreting Australia's Past* (Melbourne: Cambridge University Press, 1988); J.B. Hirst, *Convict Society and its Enemies: A History of Early New South Wales* (Sydney: Allen and Unwin, 1983); for the colonial period, see particularly Peter Grabosky, *Sydney in Ferment* (Canberra: ANU Press, 1977); Edgar Penzig, *Rogues, Vagabonds and Bloody Thieves: An Illustrated History of Colonial Crime 1850-1900* (Katoomba, New South Wales: Tranter Enterprises, 1992); Michael Sturma, *Vice in a Vicious Society: Crime and Convicts in Mid-Nineteenth Century New South Wales* (Brisbane: University of Queensland Press, 1983); P.J. Byrne, *Criminal Law and Colonial Subject: New South Wales, 1810-1830* (Melbourne: Cambridge University Press, 1993).

<sup>11</sup> David Philips and Susanne Davies, eds., *A Nation of Rogues: Crime, Law and Punishment in Colonial Australia* (Melbourne: Melbourne University Press, 1994).

<sup>12</sup> Mark Finnane, *Punishment in Australian Society* (Melbourne: Oxford University Press, 1997).

<sup>13</sup> Sean O'Toole, *The History of Australian Correction* (Sydney: University of New South Wales Press, 2006).

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<sup>14</sup> Susanna Lobez and James Morton, *Gangland Australia: Colonial Criminals to the Carlton Crew* (Melbourne: Melbourne University Press, 2007).

<sup>15</sup> Duncan Chappell and Paul Wilson, eds., *Issues in Australian Crime and Criminal Justice* (Sydney: LexisNexus Butterworths, 2005).

<sup>16</sup> Satyanshu Mukherjee, “‘Crime Wave’: Australia in Context” in Chappell and Wilson, eds., *Issues in Australian Crime and Criminal Justice*, 3-35.

<sup>17</sup> Adam Graycar and Peter Grabosky, eds., *The Cambridge Handbook of Australian Criminology* (Melbourne: Cambridge University Press, 2002).

<sup>18</sup> See for example, Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (Sydney: Hawkins Press, 2008); Chris Cunneen, ed., *Aboriginal Perspectives on Criminal Justice* (Sydney: Australian Institute of Criminology, 1992); Kelly Richards, *Juveniles’ Contact with the Criminal Justice System in Australia* (Canberra: Australian Institute of Criminology, 2009).

<sup>19</sup> See for example, C. Emsley, “Albion’s Felonious Attractions: Reflections Upon the History of Crime In England”, in C. Emsley and L. Knafna, eds., *Crime History and Histories of Crime: Studies in the Historiography of Crime and Criminal Justice in Modern History* (Westport, Connecticut: Greenwood, 1996), 67-86; C. Emsley, “The History of Crime and Crime Control Institutions c1770-c1945”, in Mike Maguire, Rod Morgan and Robert Reiner, eds., *The Oxford Handbook of Criminology* (Oxford: Clarendon Press, 1994); V. Gattrell, B. Lenham and G. Parker, eds., *Crime and the Law: The Social History of Crime in Western Europe Since 1500* (London: Europa, 1980).

<sup>20</sup> David Garland, “Of Crimes and Criminals: The Development of Criminology in Britain”, in Mike Maguire, Rod Morgan and Robert Reiner, eds., *The Oxford Handbook of Criminology* (Oxford: Oxford University Press, 2002);

<sup>21</sup> Howard Zehr, *Crime and the Development of Modern Society* (Totowa, New Jersey: Rowman and Littlefield, 1976), 9.

<sup>22</sup> See for example, J.B. Hirst, *Convict Society and its Enemies* (Sydney: George Allen and Unwin, 1983); Robert Hughes, *The Fatal Shore* (London: Collins Harvill, 1987); Nicholas, *Convict Workers*.

<sup>23</sup> T.C. Pratt, “Rational Choice Theory, Crime Control Policy and Criminological Relevance”, *Criminology and Public Policy* 7, no. 1 (2008), 43.

<sup>24</sup> Soothill et al, *Making Sense of Criminology*.